SUPPORTING BRIEF

Petitioner is a small corporation engaged in manufacturing hats at Red Oak, Georgia, working about 65 employees. The business is being operated solely by Mrs. Josephine M. Sewell, the widow of R. A. Sewell, decased; she being the sole and only person in charge of the affairs of said corporation. (R. 4-5) There is a department in said plant known as the Finishing Department where the employees (complainants in this cause) did their work. In the early Spring of 1943, a small group of employees in this department requested Mr. Beck, the working foreman, for a raise (R.p. 117 Respondent's); this request was relayed to Mrs. Sewel after which the employees were notified by Beck that Mrs. Sewell had refused their request (R. p. 118 Respondent's).

Later on, one of the complainants discussed the organization of a union; this being done in the plant amongst the employees in the Finishing Department (R. pp. 4-5 Respondent's). After these discussions, arrangements were made to contact Mr. Charlie Gillman, organizer for the CIO, who same to the Plant on May 7, 1943, and one Denton, and contacted the employees in the Finishing Department of petitioner, wherein it appears that arrangements were made for a further meeting at the home of Lovena Johnson. Accordingly, a meeting was held at the home of Lovena Johnson on May 9, 1943, where a great number of employees of petitioner appeared and discussed the formation of a union. The outgrowth of these discussions and plans was, that an election was arranged in accordance with the terms of the Act, and the same came on and was regularly conducted, which resulted in the defeat of the union by the em-

ployees in said plant. The only evidence appearing in the record about the complainants being connected with the union is the signing of a card by the complainants who testified in the complaint (R. pp. 184-185 Respondent's).

The only complaint appearing about anti-union activities on the part of Mrs. Sewell, or any of her purported supervisory employees, was the fact that Hugo Sewell three times passed the place where they had met during the noon hour for the purpose of organizing a union.

The only thing Mrs. Sewell ever did was to call one of the employees, Mrs. Gertrude Kimbrough, into the office where a meeting was arranged with her; there being present Mrs. Gertrude Kimbrough, representing the union; Mr. Robinson, plant superintendent; Mrs. Sewell's son, Robert A. Sewell, Jr., and her stenographer, Mrs. Myrtie Pattillo, where it appeared that Mr. Robinson, plant superintendent, stated in open meeting that if they wanted to organize they had a perfect right to do so (R. App. p. 43). Robert A. Sewell, one of the sons of Mrs. Josephine Sewell, stated to Mrs. Gertrude Kimbrough that she need not talk unless she wanted to. There were no words of criticism against the union used by any of the persons in said meeting, and the evidence fails to show a single protest that had been made by Mrs. Sewell against the organization of the union in said plant.

Thus, it is respectfully insisted that the finding of the Board adjudging petitioner guilty of anti-union activity is wholly lacking in substantial evidence to support such

a finding. We recognize the exclusive right of the Board to draw inferences, but there must be some substantial evidence from which the inferences can be drawn. There is nothing in the record to show that petitioner has ever assumed a hostile position towards the formation of a union; nor is there any evidence appearing in the record to support an inference that petitioner's conduct had the effect of influencing any of the employees against the union.

The Board found in favor of petitioner as to the employee Julia Scarbrough; it also found that none of the employees were discharged and that Lovena Johnson was not laid off for alleged reason that on June 2, 1943, they testified in a representation proceedings involving petitioner's employees. It further found that the only evidence bearing upon this issue is to be found in the testimony of Beck who testified that Mrs. Sewell was apparently displeased because he gave these employees permission to leave the plant at 12:30 P. M., although they did not have to appear at the hearing until 3:30 P. M., and that on the same afternoon Mrs. Sewell gave him orders to assign Elsa Harris to the wool operation, which had been Willie Dodson's regular assignment for over two years; however, neither Mrs. Sewell's displeasure nor her orders to assign another employee to Dodson's work, establishes an intent to discriminate against these employees. On the contrary, the fact that the Board's witnesses, Willie Carithers, also appeared and testified at the same hearing, but was not discriminated against, leads to the conclusion that respondent did not discriminate against an employee merely for testifying.

"We accordingly find that the allegation that the re-

spondent discriminated in regard to the hire and tenure of employment of Willie Dodson and Lovena Johnson within the meaning of Section 8 (4) of the Act has not been sustained, and we shall, therefore, dismiss that section of the complaint."

These findings are tantamount to a complete exoneration of Mrs. Sewell in all other respects insisted upon by the respondents in this case.

The Board further disagreed with the trial examiner in its findings, as follows: "The Trial Examiner found that while visiting the home of employee Davis in May, 1943, Myrtie Pattillo told Davis she hoped that Davis would not join the union. This finding is based solely upon the uncorroborated hearsay testimony of employee Kimbrough. Pattillo denied having made the statement attributed to her and Davis was not called to testify. Under all the circumstances we disagree with the Trial Examiner's finding as to the alleged conversation between Pattillo and Davis."

This is likewise tantamount to eliminating practically the entire utterances condemning petitioner on the facts of this case; in other words, the facts as a whole, do not constitute such anti-union activity as would in any respect influence the employees against the organization of a union, and it certainly could not influence other employees that were not then members of a union; it then appearing that none of said members had ever been organized and that there was no union in existence by the employees of petitioner; if such was the fact, what was the need of calling the election, and what was the act or deed of petitioner which brought about such a conclusion as reached by the Board in this cause?

The above argument in this matter will equally apply to the discharged employees and their re-instatement; if, in fact, the resolution made in the beginning of the organization of this union was carried out, then this Company should not be penalized in the amount named by the Board; neither should it be forced to adhere to the order made by them that petitioner cease and desist from further anti-union activities.

In the case of Boeing Airplane Company v. National Labor Relations Board, 140 Fed. (2d) 423, the Court laid down the rule as follows (headnotes 2, 3 and 4):

> "The National Labor Relations Board, in making findings under National Labor Relations Act, must observe traditional rule against presumption of liability or bad faith. National Labor Relations Act, Secs. 1 et seq. 10 (f), 29 U.S.C.A. Secs. 151 et seq. 160 (f).
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> "The evidence relied upon by National Labor Relations Board to support its findings must be substantial and not a mere scintilla, and the inferences drawn must be reasonable inferences generated by facts. National Labor Relations Act, Secs. 1 et seq. 10 (f), 29 U.S.C.A. Secs. 151 et seq. 160 (f).
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> "The mere filing of charges by an aggrieved party or a complaint by National Labor Relations Board creates no presumption of unfair labor practices under National Labor Relations Act, but it is incumbent upon one alleging violation of the Act to prove charges by fair preponderance of all the evidence. National Labor Relations Act, Secs. 1 et seq. 10 (b), 29 U.S.C.A. Secs. 151 at seq. 160 (b)."

An examination of the facts in the case above cited will demonstrate that, insofar as an announced policy on the

part of the company extending to employees freedom of activity in forming a union, are similar to the situation existing here. The main difference being, that in the case at bar the company being small and the number of employees limited, the meeting was held in the Company's office in which this policy was announced rather than publishing such policy on the bulletin board as was done in the Boeing Aircraft Company case. Of course, the number of employees involved in the Boeing Aircraft Company case would have made it impractical to have dealt with the question other than by published bulletins.

In the conclusion of the opinion in the Boeing Aircraft Company case, supra, Judge Murrah, in delivering the opinion of the Court on page 435, had the following to say:

> "When the conduct of Boeing is judged against the background of its announced attitude and policy, it cannot be held to have discriminated in the hire and tenure of its employees, and from the whole record we are convinced that Boeing has not engaged in a course of conduct which can be construed as an interference with, restraint or coercion of its employees in the exercise of their collective bargaining rights under Section 7 of the Act."

The Court in support of its decision that the Board must observe the traditional rule against the presumption of liability or bad faith and that the evidence relied upon to support the findings of the Board must be substantial and not a mere scintilla, and the inferences drawn must be reasonable inferences generated by facts—not surmise and speculation, cited the cases of Consolidated Edison v. National Labor Relations Board, 305, U. S. 197, 229, 59

S. Ct. 206, 23 L. Ed., 126; National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292, 299, 59 S. Ct. 501, 83 L. Ed. 660; National Labor Relations Board v. Standard Oil Co., 124 Fed. (2d) 895, and various other authorities which will be found in the decision.

We think that the above authority is controlling in the present case and the certiorari should be granted and demands a reversal of the finding of the Board and the decision of the Court below.

Respectfully submitted,

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